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Games, Inc. v. Google LLC et al.*

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE GOOGLE PLAY STORE ANTITRUST
LITIGATION

Case No. 3:21-md-02981-JD

THIS DOCUMENT RELATES TO:

**JOINT STATEMENT REGARDING
PARTIES' LIST OF CLAIMS SET FOR
TRIAL**

Epic Games, Inc. v. Google LLC et al.,
Case No. 3:20-cv-05671-JD

Judge: Honorable James Donato
Trial Date: November 6, 2023
Time: 9:00 a.m.
Courtroom: 17

*In re Google Play Consumer Antitrust
Litigation*, Case No. 3:20-cv-05761-JD

State of Utah et al. v. Google LLC et al.,
Case No. 3:21-cv-05227-JD

*Match Group, LLC, et al., v. Google LLC, et
al.*, Case No. 3:22-cv-02746-JD

1 The parties submit this joint statement of their respective claims that they intend to be tried
 2 on November 6, 2023.

3 In its August 4, 2023 minute order, the Court “directed [the parties] to formulate a joint list
 4 of the specific claims in each MDL member case that will be tried to the jury in the consolidated
 5 trial.” MDL Dkt. 571 at 2. The Court ordered the parties to file this list on October 2, 2023. *Id.*

6 All Plaintiffs assert claims under the California Unfair Competition Law (Cal. Bus. & Prof.
 7 Code § 17200, *et seq.*)¹, which are purely equitable claims to be decided by the Court. Plaintiffs’
 8 claims that are to be tried to the jury are addressed below.

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 10 Google’s position in this submission assumes that the claims of both Epic and the Match
 11 Plaintiffs will be tried together. If that were to change, then it is Google’s position that the Court
 12 and the parties may need to revisit the question of which claims and defenses will be tried to a
 13 jury. Google reserves the right to revise this list after further meet and confer discussions.

14
 15 **Epic Games, Inc. v. Google LLC, No. 3:20-cv-05671-JD**

16 **Claims by Epic Against Google**

- 17 1. COUNT 1: Sherman Act § 2 (Unlawful Monopoly Maintenance in the Android App
 18 Distribution Market).
- 19 2. COUNT 2: Sherman Act § 1 (Unreasonable restraints of trade concerning Android App
 20 Distribution Market: OEMs).
- 21 3. COUNT 3: Sherman Act § 1 (Unreasonable restraints of trade concerning Android App
 22 Distribution Market: Developer Distribution Agreement).

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¹ See Count 13, Epic Games, Inc. Second Amended Complaint for Injunctive Relief (ECF
 26 No. 378); Thirteenth Cause of Action, Match Group, LLC; Humor Rainbow, Inc.; PlentyOffFish
 27 Media ULC; and People Media, Inc. First Amended Complaint (ECF No. 380); Count 11,
 Consumer Plaintiffs Second Amended Class Action Complaint (ECF No. 172); Eighth Cause of
 Action, State Plaintiffs’ First Amended Complaint (3:21-cv-05227-JD ECF No. 188).

- 1 4. COUNT 4: Sherman Act § 1 (Per se unreasonable restraints of trade concerning Android
- 2 App Distribution Market: Project Hug (Games Velocity Program) and other Agreements
- 3 with Developers).²
- 4 5. COUNT 5: Sherman Act § 1 (Unreasonable restraints of trade concerning Android App
- 5 Distribution Market: Project Hug (Games Velocity Program) and Apps Velocity Program
- 6 and other Agreements with Developers).
- 7 6. COUNT 6: Sherman Act § 2 (Unlawful Monopolization and Monopoly Maintenance in the
- 8 Android In-App Payment Processing Market).
- 9 7. COUNT 7: Sherman Act § 1 (Unreasonable restraints of trade concerning Android In-App
- 10 Payment Processing Market: Developer Distribution Agreement).
- 11 8. COUNT 8: Sherman Act § 1 (Tying Google Play Store to Google Play Billing).
- 12 9. COUNT 9: California Cartwright Act (Unreasonable restraints of trade in Android App
- 13 Distribution Market: OEMs).
- 14 10. COUNT 10: California Cartwright Act (Unreasonable restraints of trade in Android App
- 15 Distribution Market: Developer Distribution Agreement).
- 16 11. COUNT 11: California Cartwright Act (Unreasonable restraints of trade in Android In-
- 17 App Payment Processing Market: Developer Distribution Agreement).
- 18 12. COUNT 12: California Cartwright Act (Tying Google Play Store to Google Play Billing).

19 **Counterclaims by Google Against Epic**

- 20 1. Breach of Contract
- 21 2. Breach of Implied Covenant of Good Faith and Fair Dealing
- 22 3. Quasi-Contract / Unjust Enrichment
- 23 4. Declaratory Judgment³

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² As explained in the parties' forthcoming Joint Pretrial Statement, Google disputes that this claim
is triable by jury.

27 ³ As explained in the parties' forthcoming Joint Pretrial Statement, Epic disputes that Google's
28 counterclaim for a declaratory judgment against Epic is triable by jury.

1 **Match Group, LLC, v. Google LLC, No. 3:22-cv-02746-JD**

2 **Claims by the Match Plaintiffs Against Google**

- 3 1. First Cause of Action: Unlawful Tying of Google Play to Google Play Billing; Sherman
4 Act § 1.
- 5 2. Second Cause of Action: Unlawful Monopoly Maintenance in the Android App
6 Distribution Market or, Alternatively, the Dating App Distribution Market; Sherman Act
7 § 2.
- 8 3. Third Cause of Action: Unreasonable Restraints of Trade in the Android App Distribution
9 Market or, Alternatively, the Dating App Distribution Market: Sherman Act § 1.
- 10 4. Fourth Cause of Action: Unreasonable Restraint of Trade in the Android App IAP Market;
11 Sherman Act § 1.
- 12 5. Sixth Cause of Action: Per Se Unreasonable Restraints of Trade Concerning Android App
13 Distribution Market: Project Hug (Games Velocity Program) and other Agreements with
14 Developers; Sherman Act § 1.⁴
- 15 6. Seventh Cause of Action: Unreasonable Restraints of Trade Concerning Android App
16 Distribution Market: Project Hug (Games Velocity Program) and Apps Velocity Program
17 and other Agreements with Developers; Sherman Act § 1.
- 18 7. Eighth Cause of Action: Unlawful Monopoly Maintenance in the Android App IAP
19 Market; Sherman Act § 2.
- 20 8. Ninth Cause of Action: Attempted Monopolization of the Android App IAP Market;
21 Sherman Act § 2.
- 22 9. Tenth Cause of Action: Unlawful Tying of Google Play to Google Play Billing;
23 Cartwright Act.

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⁴ As explained in the parties' forthcoming Joint Pretrial Statement, Google disputes that this claim
27 is triable by jury.

- 1 10. Eleventh Cause of Action: Unreasonable Restraints of Trade in the Android App
2 Distribution Market or, Alternatively, the Dating App Distribution Market; Cartwright Act.
3 11. Twelfth Cause of Action: Unreasonable Restraints of Trade in the Android App IAP
4 Market; Cartwright Act.
5 12. Fourteenth Cause of Action: Tortious Interference with Contract.⁵
6 13. Fifteenth Cause of Action: Tortious Interference with Prospective Economic Advantage.⁶

7 **Counterclaims by Google Against the Match Plaintiffs**

- 8 1. Breach of Contract
9 2. Breach of Implied Covenant of Good Faith and Fair Dealing
10 3. False Promise
11 4. Quasi-Contract / Unjust Enrichment
12 5. Declaratory Judgment⁷

13 *In re Google Play Consumer Antitrust Litigation, No. 3:20-cv-05761-JD*

14 **Claims by Consumer Plaintiffs Against Google**

- 15 1. COUNT 1: Sherman Act § 2 Unlawful Monopolization in the Android Application
16 Distribution Market.
17 2. COUNT 2: Sherman Act § 1 Unreasonable Restraints of Trade Concerning the Android
18 Application Distribution Market: OEMs.
19 3. COUNT 3: Sherman Act § 1 Unreasonable Restraints of Trade Concerning the Android
20 Application Distribution Market: Developer Distribution Agreements.
21 4. COUNT 4: Sherman Act § 2 Unlawful Monopolization in the In-App Aftermarket.

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⁵ As explained in the parties' forthcoming Joint Pretrial Statement, Google disputes that this claim
24 is triable by jury.

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⁶ As explained in the parties' forthcoming Joint Pretrial Statement, Google disputes that this claim
26 is triable by jury.

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⁷ As explained in the parties' forthcoming Joint Pretrial Statement, the Match Plaintiffs dispute
28 that Google's counterclaim for a declaratory judgment against the Match Plaintiffs is triable by
jury.

- 1 5. COUNT 5: Sherman Act § 1 Unreasonable Restraints of Trade Concerning the In-App
- 2 Aftermarket.
- 3 6. COUNT 6: Sherman Act § 1 Tying In-App Distribution, Including Google Play Billing, to
- 4 the Google Play Store.
- 5 7. COUNT 7: California Cartwright Act Unreasonable Restraints of Trade in the Android
- 6 Application Distribution Market: OEM Agreements.
- 7 8. COUNT 8: California Cartwright Act Unreasonable Restraints of Trade in the Android
- 8 Application Distribution Market: Developer Agreements.
- 9 9. COUNT 9: California Cartwright Act Unreasonable Restraints of Trade in the In-App
- 10 Aftermarket.
- 11 10. COUNT 10: California Cartwright Act Tying In-App Distribution, Including Google Play
- 12 Billing, to the Google Play Store.

State of Utah v. Google LLC. 3:21-cv-05227-JD

14 | Claims by State Plaintiffs Against Google

1. The States' Federal and California State Law Claims

16 The States assert several Sherman Act and Cartwright Act claims against Google. For
17 these claims, the jury will determine liability and the amount of monetary damages, if any. The
18 Court will determine the appropriate injunctive relief, along with any award of fees, expenses, and
19 costs of suit.

- 20 • Unreasonable Restraints of Trade in the Android In-App Billing Market Under § 1 of
21 the Sherman Act and the Cartwright Act. *See* ECF⁸ 188, States' First Am. Compl.
22 ("States' FAC") (Counts 6, 8).

23 • Unlawful Restraints of Trade (*Per Se* and Rule of Reason) in the Android App
24 Distribution Market Under § 1 of the Sherman Act and the Cartwright Act. *See* States'
25 FAC (Counts 2, 3, 8).

²⁸ *State of Utah et al. v. Google LLC et al.*, 21-cv-05227-JD.

- 1 • Unlawful Tying of Google Play to Google Play Billing Under § 1 of the Sherman Act
2 and the Cartwright Act. *See* States' FAC (Counts 4, 8).
- 3 • Unlawful Exclusive Dealing in the Android In-App Billing Market Under the Sherman
4 Act § 1 and the Cartwright Act. *See* States' FAC (Counts 7, 8).
- 5 • Unlawful Monopolization/Monopoly Maintenance in the Android App Distribution
6 Market and in the Android In-App Billing Market Under the Sherman Act § 2. *See*
7 States' FAC (Counts 1, 5).

8 2. ***The States' Non-California State Law Claims***

9 The States allege violations of the antitrust, consumer protection, and unfair trade practice
10 laws of various States, Commonwealths, and Districts.⁹ The States also allege violations
11 (identified in States' FAC Section III) of the consumer protection and unfair trade practice laws of
12 various States, Commonwealths, and Districts.¹⁰

13 For these claims, the jury will determine liability and the amount of monetary damages, if
14 any, for these claims. The jury will make any assessment of whether the relevant conduct was

16 ⁹ See, e.g., Alaska Stat. §§ 45.50.562, 45.50.564, 45.50.471; Ariz. Rev. Stat. §§ 44-1402, 44-1403,
17 44-1522; Ark. Code §§ 4-75-206, 4-75-302; Cal. Bus. & Prof. Code §§ 16720, 16726; Colo. Rev.
18 Stat. §§ 6-4-104, 6-4-105; Conn. Gen. Stat. §§ 35-26, 35-27, 42-110b; Del. Code tit. 6, § 2103;
19 D.C. Code §§ 28-3904, 28-4502, 28-4503; Fla. Stat. §§ 501.204. 542.18, 542.19; Idaho Code
20 §§ 48-104, 48-105; Ind. Code §§ 24-1-2-1, 24-1-2-2, 24-5-0.5-3; Iowa Code §§ 553.4-5, 714.16;
21 Ky. Rev. Stat. § 367.175; La. Rev. Stat. tit. 51, §§ 122-124; Md. Com. Law Code §11-204; Mass.
22 Gen. Laws ch. 93A, § 2; Minn. Stat. § 325D.51, 325D.52; Miss. Code §§ 75-21-1, 75-21-3, 75-24-
23 5; Mo. Rev. Stat. §§ 416.031, 407.020; Mont. Code §§ 30-14-205, 30-14-103; Neb. Rev. Stat.
24 §§ 59-801, 59-802, 59-1602, 59-1603, 59-1604; Nev. Rev. Stat. §§ 598A.060, 598.0923; N.H.
25 Rev. Stat. §§ 356:2, 356:3; N.J. Stat. §§ 56:9-3, 56:9-4, 56:8-2, 56:8-4; N.M. Stat. §§ 57-1-1, 57-
26 1-2; N.Y. Gen. Bus. Law § 340; N.Y. Exec. Law § 63(12); N.C. Gen. Stat. §§ 75-1, 75-1.1, 75-2,
27 75-2.1; N.D. Cent. Code §§ 51-08.1-02; 51-08.1-03; 79 Okla. Stat. § 203; Or. Rev. Stat.
28 §§ 646.725, 646.730; R.I. Gen. Law §§ 6-36-4, 6-36-5; S.D. Codified Laws §§ 37-1-3.1, 37-1-3.2;
29 Tex. Bus. & Com. Code § 15.05; Utah Code §§ 76-10-3104, 13-11-4; 9 Vt. Stat. § 2453; Va. Code
30 §§ 59.1-9.5, 59.1-9.6; Wash. Rev. Code §§ 19.86.020, 19.86.030, 19.86.040; W. Va. Code §§ 47-
31 18-3, 47-18-4.

32 ¹⁰ See, e.g., Alaska Stat. § 45.50.471; Ariz. Rev. Stat. § 44-1522; Ark. Code § 4-88-107; Colo.
33 Rev. Stat. § 6-1-105; Conn. Gen. Stat. § 42-110b; D.C. Code § 28-3904; Fla. Stat. § 501.204; Ind.
34 Code § 24-5-0.5-3; Iowa Code § 714.16; Ky. Rev. Stat. § 367.170; La. Rev. Stat. tit. 51, § 1405;
35 Mass. Gen. Laws ch. 93A, § 2; Miss. Code § 75-24-5; Mo. Rev. Stat. § 407.020; Mont. Code § 30-

1 knowing or willful. The Court will determine the injunctive relief, disgorgement and/or restitution,
2 civil penalties, fees, expenses, and costs, and other equitable relief, if any.¹¹

3 DATED: October 2, 2023

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7 Douglas J. Dixon
8 Attorneys for Plaintiffs
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11 DATED: October 2, 2023

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23 14-103; Nev. Rev. Stat. §§ 598.0915, 598.0923; N.H. Rev. Stat. § 358-A:2; N.J. Stat. § 56:8-2;
24 N.M. Stat. § 57-12-3; N.Y. Gen. Bus. Law § 349; N.Y. Exec. Law § 63(12); N.C. Gen. Stat. § 75-
25 1.1; N.D. Cent. Code § 51-15-02; 15 Okla. Stat. § 753; S.D. Codified Laws § 37-24-6; Tex. Bus.
26 & Com. Code § 17.46; Utah Code § 13-11-4; 9 Vt. Stat. § 2453; Wash. Rev. Code § 19.86.020.

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28 ¹¹ Google and the State Plaintiffs have met and conferred, and Google objects on the ground that
the State Plaintiffs have not provided a “list of the *specific* claims” that the States intend to assert
against Google, as the Court requested. MDL Dkt. 571 at 2 (emphasis added). Google further
objects to the extent the State Plaintiffs are asserting any *per se* claim that was not pleaded in their
complaint.

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1 **CIVIL L.R. 5-1(i)(3) ATTESTATION**

2 Pursuant to Civil L.R. 5-1(i)(3), the filer of this document attests that concurrence in the
3 filing of the document has been obtained from each of the other signatories.

4

5 By: s/ Glenn D. Pomerantz
6 Glenn D. Pomerantz

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